

Revision: HCFA-PM-95-4 (HSQB)
JUNE 1995

State/Territory: NEW MEXICO

Citation — 4.35 Enforcement of Compliance for Nursing Facilities

42 CFR
§488.402(f)

(a) Notification of Enforcement Remedies

When taking an enforcement action against a non-State operated NF, the State provides notification in accordance with 42 CFR 488.402(f).

(i) The notice (except for civil money penalties and State monitoring) specifies the:

- (1) nature of noncompliance,
- (2) which remedy is imposed,
- (3) effective date of the remedy, and
- (4) right to appeal the determination leading to the remedy.

42 CFR
§488.434

(ii) The notice for civil money penalties is in writing and contains the information specified in 42 CFR 488.434.

42 CFR
§488.402(f)(2)

(iii) Except for civil money penalties and State monitoring, notice is given at least 2 calendar days before the effective date of the enforcement remedy for immediate jeopardy situations and at least 15 calendar days before the effective date of the enforcement remedy when immediate jeopardy does not exist.

42 CFR
§488.456(c)(d)

(iv) Notification of termination is given to the facility and to the public at least 2 calendar days before the remedy's effective date if the noncompliance constitutes immediate jeopardy and at least 15 calendar days before the remedy's effective date if the noncompliance does not constitute immediate jeopardy. The State must terminate the provider agreement of an NF in accordance with procedures in parts 431 and 442.

(b) Factors to be Considered in Selecting Remedies

42 CFR
§488.488.404(b)(1)

(i) In determining the seriousness of deficiencies, the State considers the factors specified in 42 CFR 488.404(b)(1) & (2).

— The State considers additional factors. Attachment 4.35-A describes the State's other factors.

STATE <u>New Mexico</u>		A
DATE REC'D	<u>SEP 26 1996</u>	
DATE APP'D	<u>OCT 27 1996</u>	
DATE EFF	<u>JUL 01 1995</u>	
HCFA 179	<u>95-13</u>	

TN No. 95-13
Supersedes 91-02
TN No. 91-02

Approval Date: OCT 27 1996

Effective Date: JUL 01 1995

Revision: HCFA-PH-95-4 (HSQB)
JUNE 1995

State/Territory: NEW MEXICO

Citation

c) Application of Remedies

42 CFR
\$488.410

- (i) If there is immediate jeopardy to resident health or safety, the State terminates the NF's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 days.

42 CFR
\$488.417(b)
\$1919(h)(2)(C)
of the Act.

- (ii) The State imposes the denial of payment (or its approved alternative) with respect to any individual admitted to an NF that has not come into substantial compliance within 3 months after the last day of the survey.

42 CFR
\$488.414
\$1919(h)(2)(D)
of the Act.

- (iii) The State imposes the denial of payment for new admissions remedy as specified in \$488.417 (or its approved alternative) and a State monitor as specified at \$488.422, when a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys.

42 CFR
\$488.408
\$1919(h)(2)(A)
of the Act.

- (iv) The State follows the criteria specified at 42 CFR \$488.408(c)(2), \$488.408(d)(2), and \$488.408(e)(2), when it imposes remedies in place of or in addition to termination.

42 CFR
\$488.412(a)

- (v) When immediate jeopardy does not exist, the State terminates an NF's provider agreement no later than 6 months from the finding of noncompliance, if the conditions of 42 CFR 488.412(a) are not met.

(d) Available Remedies

42 CFR
\$488.406(b)
\$1919(h)(2)(A)
of the Act.

- (i) The State has established the remedies defined in 42 CFR 488.406(b).

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | (1) Termination |
| <input checked="" type="checkbox"/> | (2) Temporary Management |
| <input checked="" type="checkbox"/> | (3) Denial of Payment for New Admissions |
| <input checked="" type="checkbox"/> | (4) Civil Money Penalties |
| <input checked="" type="checkbox"/> | (5) Transfer of Residents; Transfer of Residents with Closure of Facility |
| <input checked="" type="checkbox"/> | (6) State Monitoring |

Attachments 4.35-B through 4.35-G describe the criteria for applying the above remedies.

STATE	<u>New Mexico</u>
DATE REC'D	<u>SEP 26 1995</u>
DATE APP'VD	<u>OCT 27 1995</u>
DATE EFF	<u>JUL 01 1995</u>
HCFA 179	<u>95-13</u>

A

Under State Statutes NMSA 1978 Section 24-1-5.2, NMSA 1978 Section 24-1-5, and NMSA 1978 27-2-12.4, we have the authority to impose the Federal enforcement rules mandated by OBRA1987.

TN No. 95-13 Approval Date: OCT 27 1995 Effective Date: JUL 01 1995
Superseded
TN No. 91-02

Revision: HCFA-PM-95-4 (HSQB)
JUNE 1995

State/Territory: NEW MEXICO

Citation

42 CFR
§488.406(b)
§1919(h)(2)(B)(ii)
of the Act.

(ii) — The State uses alternative remedies.
The State has established alternative
remedies that the State will impose in
place of a remedy specified in 42 CFR
488.406(b).

- (1) Temporary Management
- (2) Denial of Payment for New Admissions
- (3) Civil Money Penalties
- (4) Transfer of Residents; Transfer of
Residents with Closure of Facility
- (5) State Monitoring.

Attachments 4.35-B through 4.35-G describe the
alternative remedies and the criteria for applying them.

42 CFR
§488.303(b)
1910(h)(2)(F)
of the Act.

(e) X State Incentive Programs

- X (1) Public Recognition
- X (2) Incentive Payments

STATE	<i>New Mexico</i>	A
DATE REC'D	SEP 26 1995	
DATE APP'D	OCT 27 1995	
DATE EFF	JUL 01 1995	
HCFA 179	95-13	

TN No. 95-13

Supersedes

TN No. 91-02

Approval Date: OCT 27 1995

Effective Date: JUL 01 1995